

PAUL BAILEY
Claimant

VS.

MEYERS BAKERIES
Respondent

AND

ST. PAUL FIRE & MARINE
Insurance Carrier

The Appeals Board reviewed and considered the record listed in the March 2, 1994, Award.

ISSUES

The only issue to be considered on appeal is the nature and extent of claimant's disability.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments of the parties, the Appeals Board finds claimant is entitled to an award based upon six percent (6%) permanent partial impairment of his left hand. The March 2, 1994, Award of the Administrative Law Judge is affirmed.

Claimant was injured on October 25, 1992, when he struck his hand while holding a chain to raise a trap door. He testified that at the time of the accidental injury only his thumb hurt. He later started having pain in his arm, and up into his shoulder and neck. He was examined and treated by Dr. Melhorn. Dr. Melhorn ultimately found no objective evidence of any significant problem beyond the thumb. In Dr. Melhorn's opinion claimant's other complaints did not fit the injury described. He diagnosed a crush injury to the left thumb and rated claimant as having a twelve and seven-tenths percent (12.7%) permanent partial impairment of function of the left thumb.

Claimant was also seen and evaluated by Dr. Ernest R. Schlachter. Dr. Schlachter diagnosed a chronic sprain in the left shoulder and crush injury to the thumb. He rated claimant's disability at fifteen percent (15%) of the left hand and five percent (5%) to the body as a whole due to the left shoulder. He combined the ratings to make a thirteen percent (13%) permanent partial impairment of function to the body as a whole.

Because of the disparity in the ratings, the Administrative Law Judge referred claimant to Dr. Harry Morris for an independent medical evaluation pursuant to K.S.A. 44-516. Although Dr. Morris found some tenderness in the shoulder he also found full range of motion, no crepitation, no evidence of swelling, or ecchymosis, and no atrophy about the shoulder. He rated claimant's impairment as six percent (6%) permanent partial impairment of the hand. Although he converted the rating to a general body rating, his findings suggest that the only disability was in the hand. On the basis of Dr. Morris' evaluation and rating, the Administrative Law Judge entered an award based upon a six percent (6%) disability of the hand.

On appeal claimant argues that the evidence supports a finding of disability to the body as a whole and specifically that the evidence supports a finding of disability in the shoulder. Claimant also asserts that the Administrative Law Judge advised counsel, before seeing the report of the independent medical examiner, that the award would be based upon the conclusions of the independent medical examiner.

The review by the Appeals Board is de novo on the record. After reviewing the record and considering and weighing the evidence, the Appeals Board finds that the six percent (6%) of the hand most accurately reflects claimant's permanent partial impairment. Findings at the shoulder level are minimal and it appears do not warrant a finding of permanent impairment at that level. The medical findings do, on the other hand, justify rating beyond the thumb alone. Examination revealed a decrease of sensation in the radial and medial nerve distribution in the palm of the left hand. Claimant had lost grip strength in the hand as well as pinch strength between the thumb and fingers of the left hand.

Accordingly, the Appeals Board finds claimant did suffer a six percent (6%) permanent partial impairment to the left hand.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Shannon S. Krysl, dated March 2, 1994, is affirmed.

WHEREFORE AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the claimant, Paul Bailey, and against the respondent, Meyers Bakeries, and the insurance carrier, St. Paul Fire & Marine, for an accidental injury sustained on October 25, 1992.

The claimant is entitled to 9 weeks in the amount of \$279.35 for a 6% permanent partial scheduled injury to the left hand, making a total award of \$2,514.15. Computed as follows: 150 weeks on the schedule minus zero weeks of temporary total equals 150 x 6% of disability equals 9 compensable weeks at the rate of \$279.35, making a total of \$2,514.15.

The claimant is entitled to unauthorized medical up to the statutory maximum.

Future medical benefits will be awarded only upon proper application to and approval by the Director of the Division of Workers Compensation.

The claimant's attorney fees are approved subject to the provisions of K.S.A. 44-536.

Fees necessary to defray the expenses of administration of the Workers Compensation Act are hereby assessed against the respondent to be paid direct as follows:

Barber & Associates	
Deposition of Ernest R. Schlachter, M.D.	\$117.80
Kelley, York & Associates, Ltd.	
Deposition of Mark Melhorn, M.D.	\$102.00
Ireland Court Reporting	
Deposition of Paul Bailey	\$175.90

IT IS SO ORDERED.

Dated this ____ day of January, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

cc: Chris Clements, Attorney at Law, Topeka, KS
Vincent Burnett, Attorney at Law, Wichita, KS
Shannon S. Krysl, Administrative Law Judge
George Gomez, Director